

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

SANDRA A. HEIMER,

Plaintiff,

vs.

**OSAGE COMMUNITY SCHOOL
DISTRICT,**

Defendant.

No. C04-2014

INSTRUCTIONS TO THE JURY

INTRODUCTION/DUTIES/BURDEN

INSTRUCTION NO. 1

MEMBERS OF THE JURY:

Now that you have heard the evidence, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence.

Counsel will quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you of course are to be governed by the instructions.

You are not to judge the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

This case should be considered and decided by you as an action between persons of equal standing in the community. A school district is entitled to the same fair trial at your hands as a private individual. All persons, including school districts, stand equal before the law, and are to be dealt with as equals in a court of justice.

A school district is liable for the wrongful acts of an officer, agent or employee if the acts are done within the scope of the employment. In this case, all acts relating to the

filling of the custodian position qualify as acts done in the scope of Mr. Williams, Dr. Nicholson, and Tracy Mullenbach's employment.

Whenever a party must prove something, they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

EVIDENCE

INSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions. Evidence is: (1) testimony in person or by deposition; (2) exhibits received by the Court; and (3) any other matter admitted. Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The following are not evidence: (1) statements, arguments, questions and comments by the lawyers; (2) objections and rulings on objections; (3) testimony I told you to disregard; and (4) anything you saw or heard about this case outside the courtroom.

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable. In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness' testimony. There are many factors which you may consider in deciding what testimony to believe, for example: (1) whether the testimony is reasonable and consistent with other evidence you believe; (2) the witness' appearance, conduct, intelligence, memory and knowledge of the facts; (3) whether the witness has given statements in the past that are inconsistent with his or her testimony at trial; and (4) the witness' interest in the trial, their motive(s), candor, bias and prejudice.

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

GENDER DISCRIMINATION

INSTRUCTION NO. 3

The plaintiff, Sandra A. Heimer, brings this case against the defendant, Osage Community School District, alleging that she was discriminated against when she applied for a custodian position with the defendant because of her gender.

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, [gender], or national origin."

Your verdict must be for the plaintiff, Sandra A. Heimer, on her gender discrimination claim if the following elements have been proved by the preponderance of the evidence:

First, on March 24, 2003, defendant refused to promote plaintiff to a custodial position for which she was qualified.

Second, plaintiff's gender was a motivating factor in defendant's hiring decision.

Plaintiff's gender was a "motivating factor" if it played a part in defendant's decision to not hire her for the custodial position. Stated another way, plaintiff's gender was a "motivating factor" if it moved defendant's decision toward not hiring her for the custodial position. However, plaintiff's gender need not have been the only reason for the defendant's action.

There are two ways that the plaintiff can show that her gender was a motivating factor for the hiring decision. First, the plaintiff can prove this by direct evidence of discriminatory conduct. Second, you may, but are not required to, find that Sandra A. Heimer's gender was a motivating factor if you find that the defendant's stated reason or reasons for not hiring her are not the true reasons, but are instead a "pretext" to hide discriminatory motivation.

If either of the above elements have not been proved by the preponderance of the evidence, your verdict must be for the defendant and you need not proceed further in considering this claim.

If you find that gender was a motivating factor in the defendant's actions against the plaintiff, then the burden of proof shifts to the defendant to show that it would have made the same hiring decision in the absence of gender discrimination.

Business Judgment

Employers have the right to make employment decisions—such as whether to hire or promote an employee, for good or bad reason, absent unlawful discrimination or retaliation. You should not find that the defendant's employment decision was unlawful just because you may disagree with the wisdom of defendant's stated reasons or because you believe the decision was harsh or unreasonable. The questions for you to decide are whether the plaintiff has proved her gender discrimination claim and, if so, whether the defendant proved that it would have made the same decision regardless of plaintiff's gender, not whether the defendant's decision was a good idea or a bad idea from a business standpoint.

DAMAGES

INSTRUCTION NO. 4

If you find in favor of the plaintiff, then you must award her such sum as you find by a preponderance of the evidence will fairly and justly compensate plaintiff for any damages you find plaintiff sustained as a direct result of the defendant's actions. Plaintiff's claim for compensatory damages includes two distinct types of compensatory damages and you must consider them separately:

First, you must determine the amount of any wages and fringe benefits plaintiff would have earned in her employment with the defendant, had she been hired as a custodian, through the date of your verdict, **minus** the amount of earnings and benefits that plaintiff received from other employment during that time. This is called "back pay."

Second, you must determine the amount of any emotional distress damages sustained in the past as a result of the defendant's wrongful actions. Emotional distress may include anxiety, humiliation, loss of self-esteem and loss of enjoyment of life. The amount you assess for emotional distress damages cannot be measured by any exact or mathematical standard. You must use your sound judgment based on an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice, for or against the parties.

You are also instructed that plaintiff has a duty under the law to "mitigate" her damages—that is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if you find that the defendant has proven by the preponderance of the evidence that plaintiff failed to seek out or take advantage of any employment opportunity that was reasonably available to her, you must reduce her damages by the amount she reasonably could have avoided if she had sought or taken advantage of an opportunity.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages as a result of sympathy. Further, in arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage. A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amount, if any, you find for each of the above items will be used to answer the special verdicts.

DELIBERATIONS

INSTRUCTION NO. 5

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views. Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. Remember you are not partisans or advocates, but are judges—judges of the facts. Your sole interest is to find the truth and do justice.

I am giving you the following verdict form. If you all agree to the verdict, it will be signed by each juror. When you have agreed upon your verdict and have signed it, inform the Court Attendant.

DATE

JOHN A. JARVEY
Chief Magistrate Judge
UNITED STATES DISTRICT COURT

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VERDICT FORM

QUESTION NO. 1. Was the plaintiff's gender a motivating factor in the decision to not hire her for the school custodian position in March of 2003? (See Instruction No. 3)

Answer "Yes" or "No"

ANSWER: _____

(If your answer is "Yes," go to Question No. 2. If your answer is "No," sign the Verdict Form.)

QUESTION NO. 2. Would the school district have hired the plaintiff in the absence of gender discrimination? (See Instruction No. 3)

Answer "Yes" or "No"

ANSWER: _____

(If your answer is "Yes," go to Question No. 3. If your answer is "No," sign the Verdict Form.)

QUESTION NO. 3. What damages do you award for the following? (See Instruction No. 4.)

Back Pay	\$ _____
Emotional Distress	\$ _____
TOTAL	\$ _____

FOREPERSON

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror